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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,785	07/24/2003	Michael Lebner	0156-2006US01	1187
7590	07/26/2006		EXAMINER	
Kevin M. Farrell Pierce Atwood Suite 350 One New Hampshire Avenue Portsmouth, NH 03801			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 07/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/626,785	LEBNER, MICHAEL
	Examiner Darwin P. Erez	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 May 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 and 19-34 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-13 and 19-34 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13 and 19-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,329,564 B1 to Lebner in view of US 5,176,703 to Peterson and US 5,979,450 to Baker et al.

Regarding Claims 1, 9, 19, 27, each of Lebner's anchoring members (5 and 25) have adhesive for sticking to the skin [column 5, lines 45-54; Fig. 3] and connecting members (15 and 35) extending therefrom. "Protective film" is attached to adhesive backed surface of the each anchoring member [column 6, lines 13-15]. Lebner does not disclose a semi rigid tab as set forth in claims 1 or 19.

Peterson teaches a similar device for closing a laceration or incision comprising two component devices (24, 26) having connecting members (48,46) extending therefrom; and a release liner having a pull tab attached to a top surface of the release liner; wherein the pull tab is located along a wound edge of the anchoring member; wherein the pull tab is fully capable of folding over the remaining portion of the release liner. Peterson is silent with regards to the pull tab being a semi-rigid tab.

However, Baker also discloses a similar polymer wound dressing with adhesive for application to skin adjacent an incision [column 1, lines 26-30 and lines 44-46].

Baker teaches a “relatively stiff” handle (22) *protruding from the edge* of “flexible” film (16) [column 8, lines 45-49].

Therefore, it would have been obvious to one having ordinary skill in the art to modify Lebner’s wound closure device to include the release liner of Peterson because the pull tab of the release liner would provide the practitioner with a handle to remove said release liner from the wound closure device. Furthermore, having the pull tab located near the wound edge would allow the practitioner to place the wound closure device next to the wound area and adhere the wound edge of the device first before peeling off the remainder of the release liner, which is similar to the use of a well known adhesive bandage or BAND-AID.

It would also be obvious to modify the pull tab to make it semi-rigid, as taught by Baker, because it would allow the practitioner to better grasp the pull tab by providing a relatively stiff handle. It should be noted that the liner of Peterson or Baker is fully capable of being flipped back onto a portion of the liner while the liner to which the tab is not attached remains fully adhered to the anchoring member. Applicant’s own disclosure states that that it is known in the art to provide a crease in the liner (paragraph 29). Moreover, adding a crease to a flat surface in order to provide a fold is well known in the art, such as when a piece of paper is folded to fit into an envelope.

Regarding Applicant’s limitation that the tab extends “beyond the *wound edge*,” [emphasis added by Examiner] Examiner considers it a matter of obvious design choice *which edge* of anchoring member (5) [left, right, upper, or lower in Fig. 3 of Lebner] tab (22) extends beyond. As long as the tab extends beyond *one of the edges*, allowing the

user to easily flip the tab with their finger, it would not matter which side the tab is located. Therefore, the user could choose the wound edge.

Regarding Claims 2, 4, 20, and 22, the applied prior art reference would meet claim 1 if it had merely one connecting member (37). However, Fig. 3 shows each component (5 or 25) having three connecting members (35 or 15) connected thereto. Therefore, for example, one of the *second or third connecting members* (35) could be called a “pulling element.” Such a pulling element is attached to the adjacent connecting member via the first/second component. Alternatively, elements (40 and 45) can be considered pulling elements [column 6, lines 1-10]. These pulling elements are removable along serrated lines (17) and are shaped differently than the anchoring members.

Regarding Claims 8 and 26, Lebner discloses making his two-part connector out of an elastic polymeric material reinforced with mesh (for example). Such a spongy, sieve-like material would certainly be capable of having vapor (water particles) pass through it.

Regarding Claims 3, 5, 6, 7, 10, 11, 12, 21, 23, 24, 25, 28-30, and 32, in column 9 line 66 to column 10 line 10, Baker teaches that one film handle may “be of a distinct color, pattern, or have some other feature distinguishing characteristic that would distinguish one handle from the other.”

Regarding Claims 13 and 31, Lebner’s release liner is capable of being creased, folded, or bent.

With regards to claims 33 and 34, Lebner teaches reinforcements for the device at col. 2, line 60 – col. 3, line 4.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-13 and 19-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

de

  
ANHTUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER  
